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THIRD BIENNIAL

M E S S A G E

OF

GOVERNOR BENJ. F. POTTS,

TO THE

Legislative Assembly

OF

MONTANA TERRITORY.

♦♦♦♦♦

NINTH SESSION, 1876.

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DEER LODGE, MONTANA:
NEW NORTH-WEST.
1876.

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THIRD BIENNIAL MESSAGE

OF THE

Governor of Montana.

Gentlemen of the Council and House of Representatives:

Your attention is first invited to the following exhibit of the financial condition of the Territory and the several counties since the adjournment of your predecessors :

| | |
|---|----------------|
| Total amount of taxable property returned in 1874..... | \$9,384,311 50 |
| Total amount of revenue collected for Territorial purposes in 1874..... | 18,109 96 |
| Total debt of the Territory on the first day of January, 1875..... | 125,960 58 |
| Total amount of expenditures for 1874..... | 28,716 88 |
| Decrease of Territorial indebtedness for 1874..... | 2,800 89 |
| Total indebtedness of the several Counties to the first day of March, 1874, (Missoula County not reported)..... | 363,762 85 |
| Decrease in the assessment of taxable property for 1874..... | 419,433 50 |

ABSTRACT OF THE ASSESSMENT BY COUNTIES FOR 1875.

| | |
|------------------------------|----------------|
| Lewis and Clarke County..... | \$2,803,070 00 |
| Madison "..... | 1,698,504 00 |
| Deer Lodge "..... | 1,611,438 00 |
| Gallatin "..... | 1,021,263 00 |
| Jefferson "..... | 682,225 74 |
| Beaverhead "..... | 621,981 00 |
| Meagher "..... | 613,740 00 |
| Missoula "..... | 602,685 00 |
| Choteau "..... | 404,052 43 |

| | |
|------------|-----------------|
| Total..... | \$10,058,959 17 |
|------------|-----------------|

| | |
|---|--------------|
| Increase over the assessment of 1874..... | \$674,647 67 |
| Total amount of warrants issued for 1875..... | 32,287 72 |

The total amount of revenue received by the Territorial Treasurer for the year ending December 31, 1875, was as follows :

| | |
|--|-------------|
| Received from Lewis and Clarke County..... | \$14,709 25 |
| " " Deer Lodge "..... | 8,709 73 |
| " " Missoula "..... | 2,427 33 |
| " " Beaverhead "..... | 2,294 05 |
| " " Choteau "..... | 1,928 35 |
| " " Gallatin "..... | 4,017 20 |
| " " Jefferson "..... | 2,699 94 |
| " " Madison "..... | 7,374 91 |
| " " Meagher "..... | 3,067 48 |

| | |
|--|-------------|
| Total revenue received from County Treasurers..... | \$47,228 24 |
| Received from estate of late Treasurer Wood of Jefferson County..... | 20 57 |

| | |
|--|-------------|
| Total revenue from Counties..... | \$47,248 81 |
| Received from labor of Territorial convicts..... | 1,008 05 |

| | |
|--------------------------------------|-------------|
| Total receipts from all sources..... | \$48,256 86 |
|--------------------------------------|-------------|

LIABILITIES OF TERRITORY DECEMBER 31, 1875.

| | |
|---|--------------------|
| To 12 per cent. Bonds..... | \$ 98,250 00 |
| To interest on the same to December 31, 1875..... | 6,115 00 |
| To warrants outstanding December 31, 1875..... | 33,795 07 |
| To interest on the same to December 31, 1875..... | 2,118 46 |
| To estates of deceased persons..... | 224 77 |
| | <hr/> \$140,503 30 |

ASSETS OF TERRITORY.

| | |
|--|--------------------|
| By balance in Warrant Fund..... | \$ 526 66 |
| " " " Forty Per Cent. Fund..... | 7,291 58 |
| " " " Sinking Fund..... | 7,000 00 |
| | <hr/> |
| Total assets..... | \$ 14,818 24 |
| By registered indebtedness proper..... | 125,685 06 |
| | <hr/> \$140,503 30 |
| Decrease of debt for one year..... | 275 52 |

Number and value of stock as returned by the Assessors:

| <i>Stock.</i> | <i>Number.</i> | <i>Value.</i> |
|---------------|----------------|-------------------|
| Cattle..... | 144,327 | \$1,879,124 |
| Horses..... | 25,271 | \$64,899 |
| Mules..... | 1,896 | 108,918 |
| Sheep..... | 20,790 | 65,489 |
| Hogs..... | 5,028 | 18,929 |
| Total..... | | <hr/> \$2,037,359 |

The indebtedness of the several Counties on the first day of March last was as follows:

| | |
|-----------------------------|------------------|
| Lewis and Clark County..... | \$121,067 99 |
| Missoula "..... | 87,985 81 |
| Gallatin "..... | 56,611 09 |
| Madison "..... | 31,486 04 |
| Deer Lodge "..... | 56,152 44 |
| Jefferson "..... | 51,968 68 |
| Meagher "..... | 36,067 98 |
| Beaverhead "..... | 5,825 00 |
| Choteau "..... | 3,584 16 |
| Total..... | <hr/> 450,749 20 |

For the year ending March first, 1875, the debt of the following Counties increased:

| | |
|-------------------|-------------------|
| Gallatin County, | \$11,863 17 |
| Missoula "..... | 15,588 41 |
| Deer Lodge "..... | 8,139 25 |
| Jefferson "..... | 2,688 77 |
| Meagher "..... | 5,355 47 |
| Total, | <hr/> \$43,635 07 |

The rapid increase of the local indebtedness makes it necessary for the Legislative Assembly to adopt some legislation that will stop its increase and place it in the course of liquidation. Our sources of revenue are too limited to allow so rapid an increase of local indebtedness and yet avoid the dishonor of our credit. For relief from these growing burdens the people must look to the Legislative Assembly. The Executive alone has no power to provide a remedy. The reduction of fees and salaries of District and County officers; the consolidation of certain County offices; and the re-enactment of the Act approved November 29, 1867, requiring the Courts to tax jury fees to the unsuccessful party in each action tried by a jury, heretofore recommended

as a remedy for increasing expenditures, were disregarded by your predecessors, and the increase has continued.

That one man can perform all the duties now performed by the Sheriff and Treasurer of any County in the Territory, and for one-half the compensation now paid, is no longer a debatable question: and the same reasoning will apply with equal force to the offices of Probate Judge and County Clerk; or, if the Judges of District Courts will appoint the officer elected by the people as County Clerk, Clerk of the District Court in his County, it will enable the Legislative Assembly to reduce the fees of both offices and thereby largely reduce the expenditures of the several Counties. Our present County system is not adapted to the condition of Counties so sparsely settled as ours. It provides for as many officers as does the County system of the most populous States, and yet we have neither the business nor the revenue to sustain it. A community, no more than one of its individual members, can live indefinitely under the pressure of a steadily increasing debt. The expenditures of our local governments must be checked, and their power to contract debts restricted.

The legislative power assumed and exercised by County Commissioners should be prohibited by law, and no claims should be allowed unless clearly authorized by law. And in this connection I would respectfully recommend that a copy of the report now required by law to be made by the County Commissioners at their March session annually be filed in the office of the Clerk of the District Court, and that it be made the duty of the Court at its next term to appoint a competent person, who, with the District Attorney, shall examine the report, with power to send for persons and papers and enforce the attendance of witnesses: and if it appears from said examination that any expenditure has been made without express authority of law the same shall be reported to the Court, and it shall then be the duty of the Court to direct the District Attorney to institute proceedings against the Commissioners, on their official bonds, for the amount illegally allowed. Such a supervisory power granted the Court will check the reckless extravagance that has characterized the proceedings of some of the County Boards.

In recommending the consolidation of County offices, I would not have the law take effect upon its passage, but let it be provided that it shall take effect and be in force from and after the expiration of the terms of the present incumbents.

In considering the subject of the reduction of fees and salaries, you will doubtless be met with the argument that they were reduced by a law passed at the Extraordinary Session, but a close comparison of the old and new law will show that the reduction was very inconsiderable, and in fact it is claimed by many who have had occasion to carefully notice the operation of the new law that the Clerks of the District Courts obtain as large fees as under the old law. The reduction of the salary of the Territorial Auditor and Treasurer one-half, made by your predecessors, was cordially approved by the Executive, but their refusal to make a like reduction in the fees of District and County officers was so inconsistent and unreasonable that it presented the appearance of political partisanship. Your attention is invited to this inconsistency with the hope that you will remove it by appropriate legislation.

The following views, presented in my First Biennial Message, are reproduced here, to which your attention is respectfully invited: "I think it not improper to state that, in my opinion, every public officer should receive a fixed salary, and the whole system of compensation by fees, to be collected from parties or from the Counties or Territory, ought to be abolished. The value of the services of the Clerks and Sheriffs can be as easily estimated as can those of the District Attorney or Territorial Auditor: and when parties litigant are to be taxed with costs, let it be taxed in favor of the County or Territory and collected from such party as the Court may direct, and, under suitable regulations, be paid into the County or Territorial Treasury. The fees of Clerks and Sheriffs heretofore charged against litigants can, by a proper classification, be committed to a fixed sum and paid into the County Treasury on the certificate of the Clerk. I believe this system both practicable and judicious, with respect to all officers who have heretofore been compensated in whole, or in part, by fees."

I feel that I cannot too strongly insist upon such legislation as will insure the

decrease of County expenditures. Our local indebtedness is a hardship and a burden to all, except the capitalist who has money to invest in our securities. The debtor class that is compelled to borrow is seriously oppressed by high rates of interest which would be largely reduced if we had no Territorial or County securities on the market. It is believed that if we had no securities to absorb our home capital, the rate of interest to borrowers would not exceed 12 per cent. per annum. As the energetic and enterprising people of every community are to some extent borrowers, legislators should be careful not to oppress them by laws that will cramp their energies or dull their spirit of enterprise.

The Legislature at its last session made it the duty of the Territory to relieve the counties of the expense of the support of the insane and the cost of the collection of the statistics and at the same time reduced the levy for Territorial purposes one-fourth, and added the revenue taken from the Territory to that of the several Counties. This legislation increased the Territorial expenditures nearly seventeen thousand dollars and reduced the revenue for Territorial purposes about ten thousand dollars. Such unwise legislation is the result of the Legislature not considering the subject of the public expenditures in connection with the question of raising revenue to meet the same. The reduction of the revenue was made early in the session, but the large expenditures were not authorized until the last hours of the session when it was too late to change the revenue law, which shows how unwise it is to defer important legislation until the closing hours of the session. To do justice to the credit of the Territory, which has depreciated somewhat in the last six months on account of the increase of expenditures, the levy for Territorial purposes should be increased to four and one-half mills on the dollar and the counties should pay the cost of collecting the statistics or the law be repealed.

The present bonded debt of the Territory is about ninety thousand dollars which is payable on, or before, June first, eighteen hundred and seventy-nine. Nearly four years have elapsed since the issue of the bonds and yet not more than fourteen thousand dollars of the original sum of one hundred and four thousand three hundred and fifty dollars have been paid. No reasonable increase of the levy for Territorial purposes will be sufficient to raise revenue enough to cancel the bonds when they mature. I therefore recommend that you authorize the issue of new bonds, payable in seven years—and at the option of the Territory after two years—bearing interest at the rate of ten per cent. per annum, payable semi-annually on the first days of January and July, in the city of New York; the bonds not to be sold at less than their par value, and the issue to be limited to the amount of the old bonds outstanding at the date of the issue of the new bonds. After a careful consideration of the subject and some correspondence with Eastern capitalists, I think it safe to say that a new issue of bonds bearing ten per cent. interest, the proceeds to be applied to redeem the old issue, can be disposed of at par. If this result can be reached it will save two per cent. per annum on the entire bonded debt of the Territory and add strength to her credit by the payment of her bonds before maturity. The cost of placing the bonds on the market will be small compared with the amount saved in interest to the Territory. I think this subject should receive your early and careful consideration and if these views meet with your approbation that they be carried into effect by appropriate legislation.

I invite your careful attention to the defects in the laws in relation to taxation and collection of revenue. Many of them are so obvious that they will readily suggest themselves to you. A certified copy of the quarterly and annual settlements of the County Treasurers with the County Commissioners should be forwarded during the session of the Board making the settlement to the Territorial Auditor and he should be required to charge the Territorial Treasurer with the amount found due the Territory from the several counties as shown by the settlements returned to him. The Territorial Auditor is now without any knowledge of the amount of revenue due from the several Counties and his office is therefore no check on that of the Territorial Treasurer.

The list of property exempt from taxation is too large and works great injustice to the present taxpayer. Mining property from which the owner derives an annual revenue should be taxed like other property. Church edifices of the value of five thousand

and dollars and upwards should be placed on the list of taxable property, and all other church property and the property owned by the Orders of Free Masons, Odd Fellows and Good Templars should be taxed the same as the property of individuals. A church organization that is wealthy enough to own a church building of the value of five thousand dollars, should not consider it a hardship to be required to share the burden of taxation. The exemption of this class of wealth from taxation must increase the taxes of the masses, which appears to me to be unreasonably and unjust.

The law now requires County Commissioners to divide their respective Counties into not less than three nor more than ten Revenue Districts. I believe a better assessment will be obtained in the small Counties by one Assessor than is now obtained by three. I therefore recommend that the law be so modified that the Revenue Districts shall not exceed three in any County. It is earnestly recommended that the blanks used by the Assessors in the several Districts be printed under the direction of the Territorial Auditor, as other public printing is done, and distributed in the same manner as he is now required to distribute black Tax Receipts, Licenses, etc. This will secure uniformity in the assessments and save money to the several counties.

I respectfully urge the increase of the license tax on dealers in spirituous liquors. No tax is less burdensome on our industrial interests, or paid with less complaint, or is less felt by all classes, than a tax on spirituous liquors. The consumption of spirituous liquors does more to create debt, and the necessity for a high rate of taxes, than is realized from the ordinary taxation of such property. It fills our prisons, our asylums and infirmaries and greatly increases the expenses of our courts of justice. Shall it not be taxed to meet the expenses it compels society to incur? Shall it not be compelled to share the burden that it imposes on the property and labor of the people? In case you decide it to be unwise to increase the license tax, I then recommend that you impose a tax of twenty cents on every gallon of spirituous liquors brought into the Territory for consumption. This tax will yield a revenue of nearly twelve thousand dollars per annum, and will insure the rapid payment of the public debt. The Collector of Internal Revenue reports that 57,620 gallons of spirituous liquors were consumed in the Territory during the last year.

By direction of the Attorney-General of the United States, the Penitentiary at Deer Lodge was transferred to the control of the authorities of the United States on the first day of August, A. D. 1874, and the Territory ceased to control the same from that date. At the time of the transfer I entered into a contract on behalf of the Territory with the Attorney-General for the confinement in the Penitentiary of all persons convicted of violating the laws of the Territory, and sentenced to imprisonment in the Penitentiary, at the rate of one dollar per day for each convict so confined, which contract will expire on the first day of August next. The directors and Warden were continued in office to audit and certify to the accounts of the United States under said contract and to manage the labor of the convicts. The Warden is now serving for a salary of forty dollars per month. I recommend the repeal of the act to regulate and govern the Penitentiary at Deer Lodge City, Montana Territory, approved May 6, 1873, and the enactment of a statute similar to that found on pages 565-6 of the Codified Statutes of 1871-2. Total amount paid for keeping convicts and paying officers since November 15, 1873, \$16,370 51. Amount received from convict labor for same period, \$3,762 67. The Penitentiary is well managed, and the health of the convicts is good. The list of pardons and the reason for the exercise of the pardoning power in each case will be submitted for your information early in the session. The report of the Directors is submitted herewith, to which your attention is respectfully invited.

The Act to provide for the custody, maintenance and treatment of the Insane, approved February 13th, A. D. 1874, empowered the Governor to contract with the directory of Saint Vincent's Hospital, in the town of Helena, or the directory of any other hospital in this Territory, for the custody, maintenance and treatment of all insane persons in the Territory of Montana, for a length of time not to extend beyond the regular session of the Legislative Assembly. Immediately after the adjournment of the Legislative Assembly I addressed the persons in charge of the hospitals at Helena and Deer Lodge, requesting proposals for keeping the insane, but learned that they

were under one management, and therefore would not become competitors. The necessity was so great for some provision for the care and treatment of the insane that the proposition of Sister Loretta, in charge of the Hospital at Helena, was accepted, and a contract made to pay twelve dollars per week in warrants for each insane person confined in said Hospital. The contract went into operation May first, 1874, and expired December 31, 1875. The number of patients received was thirty-four; discharged, seven; died, four; the cost to October 31, 1875, \$15,214 25. The number of patients received is largely in excess of the number anticipated when the Act was approved. The hospital accommodations for the number of patients confined is, in my judgment, entirely inadequate, the grounds are too contracted and the buildings not sufficiently ventilated. In view of the fact that the number of the insane is likely to increase as our population increases, and as no private hospital in the Territory has proper accommodations for the present number of insane, I am constrained to recommend the erection of a suitable Asylum building at some eligible point in the Territory. From a careful consideration of the subject I am satisfied that the cost of maintaining an Asylum cannot exceed that now paid to the Hospital, and the treatment and comfort of the patients will be greatly improved. Insane persons should receive the constant attention of some person of experience in the treatment of such cases. It is not reasonable to suppose that an ordinary practicing physician, no matter how skillful a practitioner he may be, is qualified to successfully treat insane persons. To treat insanity successfully a physician must make the study and treatment of the disease a specialty, and the number of patients now maintained by the Territory should have the entire attention of the physician in charge. Many of the cases now under treatment present the worst type of insanity, and will probably have to be cared for during life at the public expense. Dr. C. F. Stewart, who organized the Insane Asylum of the State of Nebraska and was its Superintendent for some years, says: "Experience has taught us that a large per cent. of all recent cases of insanity is curable under favorable circumstances, and it is economy as well as humanity to prevent so many cases from becoming chronic and incurable—a burden and expense for life." Humanity requires that this unfortunate class of our citizens should have the benefit of the best means that can be devised for their relief, but in my opinion such relief can not be obtained in any of the private Hospitals as now organized and managed. I think the building of an Insane Asylum large enough to accommodate at least forty patients is demanded by every consideration of public policy.

In my Message to the Legislature at the last session I held the following language in regard to the enactment of a law prohibiting the sale or giving away of intoxicating liquors on election days: "The shameful practice of using intoxicating liquors to control electors in the exercise of the electoral franchise has induced the Legislatures of many if not all the States to enact stringent laws prohibiting the sale or giving away of any kind of intoxicating liquor on election days. Where this law is in force all good citizens aid in its enforcement, notwithstanding there may be a diversity of opinion among them as to the wisdom or propriety of prohibitory or temperance laws. The propriety—I might say necessity—of such a law in this Territory cannot be seriously questioned by any, for at almost every election held in the Territory the people are compelled to witness the humiliating spectacle of men in a state of beastly intoxication being dragged to the polls by designing men, and without the exercise of any intelligence above that of the brute creation, their ballots are deposited. This class may not be numerous, but it is too large, and is sufficient, at all closely contested elections, to control the result and defeat the intelligent and sober judgment of the people. No duty that a citizen is called upon to discharge requires more mature and thoughtful reflection than that of casting the ballot, and I regret that it is often discharged in the most reckless and thoughtless manner. No Court in the Territory will permit a man in a state of intoxication to testify as a witness, or sit on a jury in the most trivial case; yet judges of election will receive his ballot which may defeat the enactment of the most necessary laws that the wisdom of man ever proposed. The reckless extravagance that has heretofore characterized the conduct of the affairs of the Territory and Counties, by which a large debt has been contracted, may be largely attributed to the want of sober action at

"the polls. I can think of no question that can be presented for your consideration during the present session that is of so much importance to the future welfare of the people of the Territory as this, and I earnestly hope that you will be pleased to legislate favorably on the same." I can add nothing to the force of what I have before said, but desire again to earnestly recommend the enactment of such a law.

The Secretary of the Territory is authorized to cause to be printed the reports of the Territorial Auditor and Treasurer at the expense of the United States. I therefore recommend that the law requiring the Auditor to cause the same to be printed at the expense of the Territory be repealed. The law requiring the Territorial printing to be let to the lowest bidder has secured the same amount of printing annually for about three hundred dollars that cost the Territory, before the passage of the law, nearly ten times that sum. The operation of that law has been so satisfactory that I recommend the passage of a law requiring all County printing to be let to the lowest bidder. Such a law will prove satisfactory to the people and very materially improve the credit of the several Counties.

The election of Delegates to Congress in the several Territories is fixed by the law of Congress on the first Tuesday after the first Monday in November, 1876, and every two years thereafter. I respectfully recommend that the time fixed for the election in this Territory be changed to conform to the time fixed for the election of Delegate to Congress, that the cost of an additional election in the same year may be avoided. I believe it would be advantageous to so amend the election law as to make our County elections biennial instead of annual. It is suggested that all District, County and Township officers be elected at the same time that is fixed for the election of delegate to Congress, and that their term of office be limited to two years, and all vacancies that may occur be filled by appointment until the next general election. The adoption of this plan will save the cost of an election and the loss of time and expense to each elector, incident to an exciting election. I ask for this subject your careful consideration.

I cannot too strongly urge the enactment of a law prohibiting sporting, rioting, quarreling and engaging in common labor (works of necessity and charity excepted) on the First day of the Week, commonly called Sunday, excepting from its provisions those of our citizens who religiously observe the Seventh day of the Week as a day of rest. This is the third time that I have urged this subject on the attention of the Legislature, and I have now more confidence in the wisdom and justice of the recommendation than at any time heretofore. I hope the subject will be urged upon the attention of every Legislature that assembles in Montana until it is enacted into a law.

The Act to provide for the education of Deaf, Mute and Blind Children, approved February 13, 1874, authorized the Governor and Superintendent of Public Instruction to contract with any suitable institution in any State or Territory in the United States for the education of any Deaf, Mute or Blind Children residents of the Territory between the ages of eight and sixteen years, at an expense to the Territory of not more than three hundred dollars per annum. Correspondence was opened with several institutions, but all were found crowded to their full capacity, and consequently no contract could be made.

A large number of the officers of the several Counties, who are required by law to make reports, totally disregard the law, and the most important reports are withheld until the officers are pleased to make them. The completion of the reports of Territorial officers was delayed until nearly the close of December because of the delay of County officers in making their reports. This evil has increased each year until it is now almost impossible for Territorial officers to obtain from the Counties such information as enables them to make intelligent reports to the Legislative Assembly. The public service is injured by these delinquencies, and you should provide for the summary punishment of delinquent officers.

The improvement of the channels of the navigable rivers of Montana has not heretofore received that attention its importance demanded. We have failed, for want of concert of action, to bring to the notice of the Government the fact that with a small appropriation the Missouri and Yellowstone Rivers can be so improved as to render their navigation easy and practicable into almost the center of the Territory

during the ordinary boating season. Lieutenant-General Sheridan demonstrated during the past season that the Yellowstone River is navigable for Missouri River steamers to a point above the mouth of Big Horn River, and it is the opinion of those who appear to be able to judge correctly that a steamboat built especially for the navigation of that river can reach a point within one hundred miles of Bozeman. The safe and rapid navigation of our rivers cannot but exert a favorable influence on the present and future prosperity of the Territory. The navigation of the Missouri River has already secured from the Union Pacific Railroad rates that enable the people of Montana to lay down freight in the Territory from the eastern cities at about the same cost as now paid by the people of Utah. As the navigation of our rivers must always operate as a check on the rates of freight charged by railroads, I respectfully recommend that Congress be requested to appropriate an amount of money sufficient to improve the navigation of the Missouri and Yellowstone Rivers. I invite your attention to the following extracts from the reports of Lieutenant-Colonels Forsyth and Grant, who accompanied the expedition up the Yellowstone in June last, for the purpose of showing the character of the river and the country bordering on the same:

LIEUTENANT COLONEL J. W. FORSYTH'S REPORT.

* * * * *

The banks and bottom of the river, from its mouth to Stanley's Shoals, forty-two miles from Fort Buford, are about the same as that of the Missouri, but at these shoals the bed and bank change to gravel, and the Yellowstone throughout its length passed over by us is bounded by a gravel bed and walls.

We had no trouble in making our way up to this camp (Powder River) by the use of our steam-power alone; found no snags or rocks to interfere with our progress. The water was muddy, but not so thick and bad as the Missouri. Current, about four miles an hour, except on the rapids, where it was of course much greater. The main Wolf Rapids, which are regarded as about the most difficult in the lower river, are 250 feet long. We steamed back and forth across them with great care, taking soundings. The least depth of water was eight feet, and we estimated the current to be about six miles an hour. The south bank near Wolf Rapids, has a perpendicular face on the river fifty feet in height, with horizontal veins of coal five feet and less in thickness, running through it. The ground on the north bank drops down into a low prairie point. Powder River, at its mouth, is 125 yards wide; current sluggish, and the water of a dark reddish color. Its east bank is bounded by a rough line of hills, of a bad land character and appearance. On the west bank there is a small patch of prairie near its mouth. Very little open country on the south bank of the Yellowstone; on the north bank, high prairie, which is quite extensive, varying in width, and is finally closed in on the river by a range of hills 350 feet high, which form the north bank of the river about two miles from our camp, and which, from their appearance, were called Devil's Backbone Buttes. They pushed down onto the Yellowstone in our front and seemed to be barriers to our further progress to the west. Small amount of cottonwood and willow on the Powder River, very little growing timber on the Yellowstone.

About five miles above Powder River, a small creek winds its way through it, and is known as Custer's Creek. Passed a small stream which puts into the river from the south, a little above the Devil's Backbone. It heads in the hills some distance to the south of us, near a butte which we called Cap Butte, and the stream was called Gun Creek. Its valley is small and filled with growing pine. The banks of the Yellowstone near Gun Creek are much lower than at any other point passed so far on the river. On the south bank we had a prairie covered with prickly pear, sage brush, and some bunch grass. On the north side the hills, which are about 150 feet in height, close into the river. We passed a high bank of clay, with coal underlying it. Hills on the south, close in to the river, with plateaus on top and cedar growing on them. Prairie extends along the bank of the river on the north side, of the character already described, about five miles deep. Twenty-four miles from the mouth of Powder River, we struck the main Buffalo rapids, which are half a mile in length, with a current which runs about six miles an hour. Passed back and forth through the rapids and found that the lowest depth of water was seven feet in the channel. Had no trouble in steaming over them, although we had a heavy head wind as well as the current to contend against. In our progress up the river for the next two or three miles the surface of the water was disturbed by ripples, indicating a broken or rocky condition in the bed of the channel, which interfered with the peaceful flow of the water, but did not amount to anything like an impediment to the successful navigation of the stream. We passed the mouth of Sunday Creek, which falls into the river from the north, only presenting to the eye a small valley about six miles in length, and then in succession several large and finely-timbered islands, reaching the mouth of Tongue River, which is eleven miles from Sunday Creek and thirty-eight from Powder River. From the head of Buffalo Rapids, on the south bank, a high range of sharply-defined

hills, the most prominent butte being called Martin's Butte run diagonally across from the Yellowstone to the valley of the Tongue River. Between this range, which is from 200 to 300 feet high, with very little timber or verdure visible, and the two rivers, is a bottom covered with sage, prickly pear, and bunch grass. Along the Yellowstone the cottonwood timber increases at each step of the route till you reach the rich timbered valley of the Tongue River. On the west side of this last named river the cottonwood fringes the Yellowstone, and behind it, running back to the hills, we found a bottom five miles long and two or more miles deep covered as the one just described on the east bank.

Left camp at the mouth of Tongue River, and reached the mouth of the Big Horn River, which is 165 miles from Powder River and 127 miles from Tongue River. We found the general character of the country on the north bank as described by General Stanley in his report. The only streams that we discovered flowing into the Yellowstone on the south bank between Tongue River and the Big Horn were Emmet's Creek and a creek which is called Alkali Creek. Pine and cottonwood increased very rapidly as we made our progress to the West. The river was filled with islands, all well covered with a heavy growth of cottonwood, and the surface of the ground carpeted with fine bunch grass, wild rye, and sage. The hills that open and shut off the valley are as a general thing not so high as those in the lower part of the river, and are rounded off, covered with sage and bunch grass, and with every indication of a plateau country behind them which would give good grazing. Where the hills break abruptly on the river, they give sandstone bluffs instead of the clay of the lower country. The major part of the prairie bottoms are on the north side; the only large one between the points named on the south bank runs up to within eleven miles of the Big Horn, and has a frontage on the river of about twenty-one miles, varying in width from half a mile to four miles. These prairie bottoms are formed in two benches, the lower one from three to four feet above the water, well timbered, but, by the drift-wood seen, must be subject at times to an overflow. The other, or second bench, is some four feet higher than the first, and gradually slopes back to the hills.

After making an examination of the Big Horn, we pushed on up the Yellowstone River. Above the Big Horn, the water of the Yellowstone was clear, and, although we left this large tributary, which is 150 yards wide, and throws into the Yellowstone an immense volume of water, behind us, still the channel and the quantity of water and the bed of the stream gave no signs to be discovered by our eyes of any diminution in its capacity, power, or strength. The width of the river averaged about 300 yards, and at many places, from main shore to main shore, it was fully 1,000 yards.

I can say of the country generally that the north bank is almost continuous bluffs and hills from the Big Horn River to the large prairie opposite the mouth of Clark's Fork, and that on the south bank you have the prairie bottom complementary thereto. Pompey's Pillar prairie is fully twenty miles long, and the prairie opposite Clark's Fork extends to the west up to, if not beyond, Bridger's Cañon. These prairies seemed to improve somewhat as we went west, though the growth was about the same as upon those already described. Growing timber along the rivers was not so abundant beyond Pompey's Pillar, as up to that point, though there is an inexhaustible supply in the country to meet all the demands that a settlement of this valley would require. In regard to the rivers rising south of the Yellowstone, and emptying into it, I shall first mention Tongue River. The water of this river is of a reddish tinge, it is 150 feet wide at its mouth, and holds to this width for some two miles or more from the main river. It is quite crooked, with a depth of water at the mouth of 7 feet. The main valley of the Yellowstone is about 2 miles wide where it is joined by the above stream and is a prairie bottom with some good grazing. Both streams are well timbered with cottonwood, and where the Tongue River breaks through the hills its valley is about 2 miles wide. The hills on the east bank are 350 feet high, and the country beyond is very broken. Those on the north, near the main valley, are clear cut, conical in shape, covered with sage brush and bunch grass, and are not over 150 feet high, but increase as you go up the valley.

I found the place where the Rosebud River was reported as emptying into the Yellowstone, but the bed of the stream which I examined was a dry one, with no sign of water. The valley where it joins the Yellowstone is not over a mile long, all told, and no signs of any camp or occupation by Indians; very little timber and no valley to it, except the short one from the hills of the Yellowstone to the main river. In fact the result of my examination, both coming up and going down the Yellowstone, leads me to believe that the Rosebud River does not empty into the Yellowstone direct, but that its waters are conveyed to it through the Tongue River and not into the Yellowstone. Emmet's Creek is twenty-four and a half miles above Tongue River, about twenty five or thirty feet wide, and winds its way through a small prairie from the hills to the parent stream; has some cottonwood and ash growing on its banks. Near its mouth we found four piles of stone which mark the spot where McIlhenny's trading-post once stood. Signs of old Indian camps near this stream.

We steamed up the Big Horn River for a distance of twelve miles, found it quite crooked, with a narrow valley, and were obliged to return on account of the water becoming distributed over so wide a space that the main channel did not afford a suf-

ficient depth of water for us to continue our course. The current of the Big Horn was about as strong as that of the Yellowstone; water muddy, and at the mouth it was about 150 yards wide. Where it joins the Yellowstone, the points of land on each side are small prairies with good grass. On the east bank the bluffs run close to the river and are sparsely timbered. On the west bank the valley is mostly filled with cottonwood, and the hills are about 150 feet high, with plateaus on the top. Near the point where we turned back, there was a small stretch of prairie about a mile wide and a mile and a half long. The north bank of the Yellowstone opposite the mouth of the river is a sandstone bluff, 150 feet high, with rolling plateau on top covered with sage and some bunch grass. Where Pryor's River empties into the Yellowstone, sixty-two miles above the Big Horn, is a small stream, twenty-five feet wide, winding through the western part of the prairie, which extends from Pompey's Pillar to it. Very little lumber on it. It is reported to have a fine country near its head waters.

The Yellowstone River from the highest point reached by us to the mouth of Powder River, sweeps through the country in long and majestic stretches, with a current of at least four miles an hour. Its bosom is studded with islands by hundreds, some of which are three or more miles in length, and covered with cottonwood groves; and many of them are so handsome that they almost make the voyager believe that they are the well-kept grounds pertaining to some English country house. I never saw so fine a growth of cottonwood in my life as on the Yellowstone, twenty-five miles above Tongue River. These trees will run from three to five feet, and some are six feet in diameter. The supply of cottonwood and pine which exists throughout the upper Yellowstone country is ample to meet all the requirements of any settlement of the valley; and the indications are that large beds of coal can be found and worked in the neighborhood of Powder River. Sandstone bluffs crop out on the Yellowstone above Tongue River, and some limestone was passed above Pompey's Pillar. The mouth of the Big Horn may be regarded as the head of navigation on the Yellowstone River, and for three months of the year this river presents less obstacles to its navigation than the upper Missouri, and, indeed, many other rivers in this and other countries. The channel is unchanging, for it passes over a gravel bed from its head to its mouth, and there are no snags. When this is contrasted with the shifting and unreliable water of the Upper Missouri, it ought to make the rates of insurance less on the Yellowstone River than on the Upper Missouri. We found the greatest abundance of game along our entire route—antelope, bear, black-tail deer, elk, mountain sheep, also herds of buffalo, between Tongue River and the Big Horn, as we went up, but before we returned they had all crossed the river and gone north. * * *

LIEUTENANT-COLONEL F. D. GRANT'S REPORT

States that the Yellowstone is fairly navigable up to a point thirty miles above the mouth of the Big Horn. The islands, of which there are a great many, differ from those of the Missouri by being comparatively permanent. They are all well timbered with cottonwood, box-alder, and some ash. The Yellowstone Valley presents many beautiful landscapes. It is particularly grand when seen from the mouth of Powder River; and from the mouth of the river down to the Missouri the soil is an ash clay, on which little or nothing will grow. Adjoining the river, however, are several extensive flats that are comparatively fertile. A sort of coal (lignite) exists in all the banks below Powder River. The coal (lignite) contains so much sulphur that it probably cannot be used for any other than domestic purposes. Beds of gypsum are found wherever the coal has been burnt out, and above these beds are red banks. From Powder River up to the mouth of the Big Horn sandstone makes its appearance in larger quantities, and the hills are capped with gravel, mixed with earth. After passing the mouth of the Big Horn, the strata of sandstone become harder and thicker, and the growth of pines is much larger. At a distance of from twenty to thirty miles back from the river, on the south side, a park country exists, as is evidenced by the abundance of game coming from that direction. Miners have found color in prospecting for gold in the different streams in the mountains of this locality. As the tributaries of the Yellowstone have a gravelly bottom of igneous and metamorphic rocks, porphyry, granite and quartz, there is no reason that there should not be gold found, even in considerable quantities, in this formation. The Yellowstone River has its source in the Yellowstone Lake, and takes a course a little west of north until it unites with Shield's River. At this point it takes a general direction a little north of east to the mouth of Powder River, and thence a due eastern course to the Missouri. In low water the stream is navigable with ease as far up as Pompey's Pillar. The fish of the Yellowstone consist of catfish near its mouth, shiner, catfish and jack salmon between Powder River and the Big Horn west of Powder River. Buffalo, elk, antelope, mountain sheep and beaver are found in great numbers. The Yellowstone Valley above the mouth of the Powder River can all or nearly all be cultivated, as the soil is rich. The islands, many of which are very large, could be cultivated. There is abundance of coal and pine wood that could be taken out with profit. The water is fine. * * * And in the valleys there grow large quantities of wild plums, cherries, gooseberries, buffalo berries, currants and wild strawberries.

The following are the names of the places and distances on the Yellowstone:

| Names. | Remarks. | Local distance. | Distance from mouth of river. | Distance from mouth of Yellowstone. |
|------------------------------------|---|-----------------|-------------------------------|-------------------------------------|
| Mouth of Yellowstone..... | | 235 | 0 | 235 |
| Powder River..... | | 5 | 5 | 240 |
| Bear Rapids..... | Very swift current..... | 7 | 12 | 247 |
| Devil's Backbone..... | Left bank, opposite Gun Creek..... | 12 | 24 | 259 |
| Buffalo Rapids..... | As formidable as any in the river..... | 3 | 27 | 262 |
| Sunday Creek..... | Left bank..... | 2 | 29 | 264 |
| Reynold's Island..... | Right bank..... | 8 | 37 | 272 |
| Tongue River..... | Right bank, good site for post..... | 11 | 48 | 283 |
| Scene Custer's 1st fight, '73..... | Left bank..... | 14 | 62 | 297 |
| Poncie Island..... | Right bank..... | 6 | 68 | 303 |
| Little Porenpine River..... | Left bank..... | 3 | 71 | 306 |
| Emmet's Creek..... | Right bank, Meldrum's trading post..... | 5 | 77 | 312 |
| Big Porenpine..... | Right bank, good site for post..... | 3 | 80 | 315 |
| Avenue Island..... | | 2 | 82 | 317 |
| Bear Island..... | Of considerable size; bear seen on it..... | 27 | 109 | 344 |
| Palisades..... | A range of sandstone bluffs, left bank..... | 31 | 140 | 375 |
| Alkali Creek..... | Right bank..... | 22 | 162 | 397 |
| Scene Custer's 2d fight..... | Left bank; fought in 1873..... | | | |
| Big Horn River..... | Volume of water about one-third of Yellowstone..... | 2 | 164 | 399 |
| Cape Horn..... | A very sharp bend of the river..... | 10 | 174 | 409 |
| The Narrows..... | About 75 or 80 yards wide..... | 17 | 191 | 426 |
| Pompey's Pillar..... | About 150 feet high, right bank..... | 12 | 203 | 438 |
| Little Grant Rapids..... | Very strong current..... | 15 | 218 | 453 |
| Pryor's Creek..... | Right bank..... | 8 | 226 | 461 |
| Belle Buttes..... | Right bank; Hell Gate Rapids here..... | 10 | 236 | 471 |
| Highest point reached..... | | 12 | 248 | 483 |

The water of the Yellowstone is deeper than that of the Missouri above the mouth of the Yellowstone, and could be navigated more months in the year than the Missouri can be. The distance from its mouth to the head of navigation is about one-half the distance from the mouth of the Yellowstone to Fort Benton, and the distance from Pompey's Pillar to the settled part of Montana is about the same distance as it is from Fort Benton, and I believe a good wagon-road all the way could be had by following the Yellowstone up to Crow Agency, and then going across to the Gallatin Valley.

The eleventh cause of challenge to a juror in criminal causes should be amended so that when the juror says he has formed or expressed an opinion as to the guilt or innocence of the accused, the Court should be required to examine him under oath as to the ground of such opinion, and if it has been founded upon reading newspaper statements, comments, or reports, or upon rumor or hearsay, and not upon conversation with witnesses of the transaction, or reading reports of their testimony, or hearing them testify, and the juror shall say on his oath that he feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, and if the Court be satisfied that the juror is impartial and will render such a verdict, may admit such juror as competent to serve in such case. It will greatly reduce the expenses of jury trials if you will reduce the number of peremptory challenges of jurors in both civil and criminal cases, and I believe no injustice will result to litigants.

Your attention is invited to the reports of the Judges of the Supreme Court for the years 1874 and 1875, accounting for the appropriation for the Territorial Law Library, which are submitted herewith. The reports convey no information as to the condition of the Library, except that the books are scattered and that the appropriation for 1875 has not been expended. It appears to me that you should not hesitate to provide by law for the organization of a Territorial Library, with rules and regulations for its government. A suitable building should be secured and a Librarian ap-

pointed to collect the books together and have charge of the same under such rules as you may prescribe. It is not creditable to the Territory to allow the Library to remain uncared for, and unless you make provision for its preservation and increase, I recommend the repeal of the annual appropriation and the return of the amount of the last warrant to the Territorial Treasury.

I transmit for your information the reports of the President and Treasurer of the Historical Society of Montana, showing the expenditure of the annual appropriation for said Society for the years 1874 and 1875.

In compliance with the School Law I transmit to you the report of the Superintendent of Public Instruction, and ask for it your careful consideration. The unanimity with which the public school system is sustained by our people will justify you in so amending the School Law as will add to its efficiency and success. The recommendations of the Superintendent appear to be reasonable and just, and should have great influence in shaping the school legislation of the session. I respectfully request that you authorize the printing of the report for distribution in the Territory and exchange with the several States and Territories, and that hereafter the report of the Superintendent of Public Instruction be printed under the same law that other Territorial printing is done. The following valuable statistics are taken from the report:

| | |
|--|-------------|
| Whole number of children of school age, | 3,837 |
| Number attending school during the year, | 2,373 |
| Number of teachers employed during the year, | 99 |
| Number of school-houses in the Territory, | 74 |
| Amount of school tax collected for the year, | \$31,611 01 |
| Amount per capita for each child of school age, | 8 42 |
| Average compensation paid teachers per month, | 61 45 |
| Total amount appropriated for school purposes during the year, | 31,821 68 |
| Average cost of tuition for each scholar per month, | 3 16 |

The law authorizing the appointment and prescribing the duties of Notaries Public should be amended so that applicants shall not be required to have their bonds and commissions recorded and filed. The bond of an applicant should be approved by the Clerk of the County in which he resides and filed in the Executive Department, together with his oath of office, before his commission issues. The present requirement that the commission must first issue before the bond is given is unreasonable, for it frequently happens that a commission is issued and no qualification ever follows. The date of the commission of every Notary Public should be the date of his qualification. It has been suggested as a matter of convenience for the Deputy United States Mineral Surveyors, that the Governor should be authorized to appoint persons engaged in that profession Notaries Public, with power to take affidavits and acknowledgments in any County in the Territory. I recommend that a reasonable fee be charged each applicant and paid into the Territorial Treasury before his commission issues.

Since the adjournment of the last Legislature the question of voting aid to some corporation that will construct a railroad into Montana has engaged the attention of the people and has been discussed by the public press of the Territory. So far as I am advised, no proposition has been made by any corporation to build a railroad into the Territory, and hence it appears premature to discuss the question. If any propositions are to be submitted to you during your present session they should have been made known before you assembled, that you might have had an opportunity to consult your constituents before you were called upon to act on them. Legislation of such importance should not be considered hastily, but should receive calm and dispassionate consideration. We have many precedents for legislation granting subsidies to railroad corporations; but has time demonstrated the wisdom of such legislation? Are the people who have been affected by it so well satisfied with it as to justify you in

backing in such legislation? Precedents are the great lights which usually guide the legislator in all important legislation. If people who have experienced the effects of granting subsidies to railroad corporations now believe such legislation wrong in principle and oppressive to an unreasonable degree, you should hesitate long and thoroughly consider the subject before you give your vote for any bill granting a subsidy.

As pertinent to this subject I quote the following from the Inaugural Address of Governor Irwin, of California:

To illustrate by the history of our own State, who will question the beneficial effects of that clause in our Constitution which forbids the creation of a State debt of over three hundred thousand dollars? Or of that other section which forbids the credit of the State to be given or loaned to any individual, association, or corporation, or the State to become a stockholder in any association or corporation?

Debt is the bane of modern states. It hangs like a millstone about the neck of all civilized peoples. It consigns the laboring classes to penury and want by consuming the products of their labor in taxes to pay its interest. The money kings have their mortgages not alone on the real and personal property under the government to which they have made loans, but on the brain and muscle of the people as well. This is the bondage of debt; it descends from father to son; from generation to generation.

Now, while I will not question the right of one generation to appropriate, — to squander, if you will, — its surplus earnings as it shall choose, I beg to ask by what authority it assumes to encumber the inheritance of its successor — the land which God has given as the common heritage of all generations — with mortgages to the money kings? And still more do I desire to know where one generation obtains the right to hypothecate the brain and muscle — the energy, enterprise and labor — of generations yet unborn, that it may enjoy the luxury of spending money that it has not earned.

Who will undertake to say what proportion of the net earnings of our capital and industry would now be required to pay the annual interest on the debt we would have by this time created, but for this prohibitory clause of our Constitution?

But to the thoughtful student there is something almost comic in the want of logic in the Constitution which, while it forbids the Legislature to create a debt of more than \$300,000, allows it to create county and municipal debts measured only by the ability of the counties and municipalities to obtain credit; the counties and municipalities being but fractional parts of the State, organized solely for the convenience of local government. On this subject, however, we are not left to the voice of logic alone. Our own history speaks. While the present healthy condition of our State finances is the highest possible indorsement of the wisdom which placed a limit to the State debt which the Legislature might create, the bankrupt condition of some of the counties, which were once wealthy and prosperous, and the embarrassed condition of many others, demonstrate, beyond all controversy, that the Constitution ought to have gone further, and placed a limit also to the indebtedness which counties and cities might create. In the absence, however, of any constitutional prohibition, the Legislature must resolutely refuse all authority to counties and cities to create debt beyond a certain fixed, but small, percentage of their assessment rolls.

A not inable percentage of our Assessment Roll is now covered by debt, and unless the legislation of the present session is directed toward the reduction of expenditures, the public debt must continue to increase, which will, in my judgment, make the granting of any subsidy impossible. I am not one of those who can see any great reason for despondency if a railroad is not immediately secured. The seer-instituted prophets of three years ago predicted the direful ruin of depopulation and financial ruin if the Territory did not at once vote aid to some corporation that would build a railroad to Montana. The predictions have signally failed; and the Territory has steadily advanced in prosperity, notwithstanding the whole country has been suffering from the most depressing financial crisis that has occurred since the organization of the government. Failures of business houses have been of almost daily occurrence throughout the Eastern and Western States during the last two years, and yet with all our isolation, and in the face of predicted bankruptcy and ruin, failures in Montana have been the exception. A few of these prophets are found in almost every community and their mission on earth appears to be to complain of the present and predict evil of the future. They are unsafe counsellors and should never be permitted to influence legislation.

The interests of the people of Montana so far as they can be affected by legislation are now committed to you. An honest and fearless discharge of duty, influenced by no clique or local prejudice, will entitle you to the thanks of every good citizen in Montana. Accept my assurance that in all your endeavors to legislate for the best interest of the entire people within our borders, you may confidently rely upon my zealous co-operation.

BENJ. F. POTTS.

HELENA, MONTANA, January 27, 1876.

